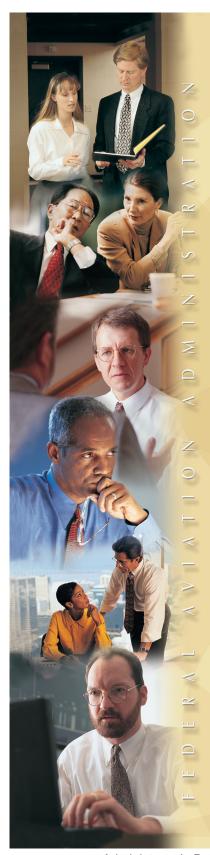




Preventing Sexual Harassment in the Workplace



ADMINISTRATOR'S POLICY STATEMENT ON...

PREVENTION OF SEXUAL HARASSMENT

Sexual harassment is against the law, and the FAA has put a zero tolerance policy in place to eliminate it from the workplace.

We're all accountable for our actions on the job. We must make sure our workplace is free from inappropriate conduct. The law prohibits sexual harassment, which includes "conduct that interferes with an individual's work or creates an intimidating, hostile, or offensive environment." Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature are unacceptable. Using workplace computers to view sexually explicit or pornographic materials on websites is prohibited as well.

Executives, managers, and supervisors are accountable for ensuring that the workplace is free from sexual harassment or other inappropriate conduct of a sexual nature and for taking action to stop such behavior. Employees also are personally accountable for ensuring that they do not engage in such behavior. Any employee who engages in sexual harassment or other inappropriate conduct of a sexual nature or who tolerates or condones such conduct is subject to disciplinary action under FAA's conduct and discipline policy.

As our Flight Plan clearly states, "The people of the FAA are the key to achieving our mission." We strongly believe that fairness and diversity at the agency directly relate to the strength of our organization. Let us work together to maintain a professional workplace at all times.

Javion C. Islakey Marion C. Blakey /

Administrator

May 2004



This brochure was designed to raise awareness about sexual harassment by providing a basic overview of topic. It was not intended to be a comprehensive guide regarding the legal burdens of proof or analysis of sexual harassment claims.

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to, the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, a contractor sexually harassing an FAA employee, an FAA employee sexually harassing a contractor, a supervisor in another area, or a co-worker.
- A supervisor, manager, or employee harasses an applicant for employment; and
- ♦ The person harassed does not have to be the direct object of the harassment but could be anyone affected by the offensive conduct.

Unfortunately, stopping sexual harassment is often much more difficult than defining it. There are many situations in the workplace where what actually happened is unclear. The determination of whether an act is sexual harassment or sexual in nature must be based upon whether an investigation or inquiry reveals that there was an environment that a reasonable person would find hostile or abusive, and one that the alleged victim, in fact, did perceive to be so.

In each of the above situations, the behavior is unacceptable and should be, prevented from ever occurring.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring.

Throughout this publication, small vignettes will be presented entitled, "Is it Sexual Harassment or Not"? These are designed to give you ideas of the different situations in which sexual harassment may occur.

Mar. 2006



Sexual harassment is one form of illegal discrimination prohibited under Title VII of the Civil Rights Act of 1964, as amended.

In general, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, verbal or physical behavior taken because of an individual's sex that affects a term or condition of employment.

For many people, "sexual harassment" is an emotionally charged topic loaded with confusion and uncertainty. Through open communication with each other, we can create an atmosphere of respect in the workplace and a workable method for employees to talk about sexual harassment.

Is it Sexual Harassment or Not?

My supervisor or coworker tells me I look "nice," "attractive," or "hot."



An occasional compliment of a socially acceptable nature like "You look nice" is not sexual harassment.

However, constant appraisals on the way you look, as well as stronger terms, such as "I love the way your body fills out that suit" could be sexual harassment.

Excessive compliments of a personal nature could cause individuals to feel uncomfortable. One should exercise caution when having discussions not directly related to business matters.

Regardless of how an individual chooses to dress, mistreatment or misconduct by other individuals in the workplace is never warranted.



There are basically two types of unlawful sexual harassment. The two types of sexual harassment are "quid pro quo" and "hostile environment."

Quid Pro Quo

"Quid Pro Quo" literally means "this for that" or "in exchange for". It occurs when a supervisor, or someone in a position of power, states, or implies that a person's employment actions or other conditions of employment depend on submitting to sexual advances, and when such action is taken.

A "quid pro quo" case involves a tangible employment action. It must be clearly demonstrated that a tangible employment action has been actually taken, e.g., hiring, firing, failing to promote, reassignment with significantly different responsibility or a decision causing a significant change in benefits.

Example:

- A supervisor tells an employee.....
- A Senior Team Leader tells a team member, or...
- An agency recruiter tells an applicant....

"Unless he/she engages in conduct of a sexual nature the individual will be denied a job, promotion, training, detail, etc".

Hostile Environment

"Hostile Environment" occurs when the conduct is so severe or pervasive that it changes a term, condition or benefit of employment.

The conduct can be by a supervisor, coworker, or agency contractor. An essential element of such activity is that it is sexual in nature and the harassed person considers the activity unwelcome.

Isolated minor incidents may be unwelcome but may not rise to the level of a "hostile environment," because they are not severe or pervasive. This means rare incidents of flirting or a tasteless joke will not likely constitute sexual harassment. However, when this conduct occurs repeatedly, and over a period of time, it may be considered severe and pervasive.

In a "hostile work environment" case, there need not be a tangible employment action taken, as long as there is sufficient evidence regarding the severity and pervasiveness of the unwelcome conduct.

Examples could include:

- Deliberate touching, inappropriate leaning over, cornering, or pinching
- Sexually suggestive leering, looks, and gestures
- Pressure for sexual favors
- Sexual jokes, teasing, remarks, or questions
- Sexually explicit calls, or letters at work or home
- Whistles, hooting, sucking, lip smacking, and animal noises
- Tales of sexual exploits
- Comments about a person's body in a sexual way
- Graphic descriptions or display of pornography or inappropriate pictures for the workplace.
- Sexual graffiti
- Inappropriate gifts for a business relationship
- Indecent exposure

Any of these examples may offend a coworker. They may create a hostile environment depending on the circumstances and the people involved.

Is it Sexual Harassment or Not?

At the morning coffee break, several coworkers are talking about their weekend sexual activities. You are not part of the conversation, but it was offensive and intimidating to you. Is this sexual harassment?



Maybe. Even though you were not the target of the conversation, this may create a hostile environment resulting in sexual harassment. It would depend on how often these conversations occurred and the subject matter discussed.

If this type of discussion persists or is pervasive within the organization, a hostile environment for those employees who do not engage in the discussions may result. Conversations regarding individual sexual activities or exploits do not belong in the workplace.

Who Could Be Harassers?

- Supervisors
- Co-workers
- Customers
- Contractors

Elements of Sexual Harassment

- It is unwelcome
- It is of a sexual nature
- It involves a tangible employment action
- It is severe or pervasive enough to affect a term, condition or privilege of employment
- The Agency knew or should have known of the harassment

UNWELCOMENESS: What Does it Mean?

Unwelcome behavior is just that; it is behavior that is not welcome, not solicited and not wanted by the offended person.

While we may perceive the behavior to be friendly and harmless, our coworker may find the behavior offensive, so it is important to think before we act in a way that could be perceived as sexually offensive.

Most adults, who pause to think about it, can distinguish between what might be perceived as welcome and unwelcome behavior, especially if they think carefully about how others might react.

Behavior That Could be Considered Sexual Harassment if Unwelcomed

<u>Verbal</u>

- Sexual teasing, jokes, remarks, or questions
- Unwanted comments on appearance
- Name calling of a sexual nature
- Obscene telephone calls
- Pressure for dates or sexual favors.

Non-verbal

- Facial expressions of a sexual nature -winking, licking lips
- Looking up and down (elevator eyes)
- Staring or leering

Visual

- Posters, cartoons, photos or drawings of a sexual nature
- Sexually suggestive Notes, Memos E-mails
- Magazines of a sexual nature
- Computer graphics of a sexual nature
- Objects of a sexual nature

Physical

- Inappropriate touching, hugging, kissing
- Inappropriate gifts for a business relationship
- Inappropriate leaning over
- Bumping against
- Pinching, grabbing or patting
- Cornering or trapping
- Indecent exposure, mooning
- Actual or attempted sexual assault

Intent vs. Impact

It is important to understand that *intent* is not relevant in determining whether or not a behavior is sexual harassment.

All that matters is the *impact* of the behavior on the work environment. Regardless of intent, the behavior will be judged on its impact upon the work environment.

This fact is critically important. The statement, "I didn't mean anything by it," is **NOT** a valid defense of harassing behavior.



It is the duty of every employee to stand against sexual harassment and take an active role in supporting a positive work environment for all. Employees should:

Assess the Situation

Since it is not always clear what is sexual harassment, one should start by examining and assessing the situation. A number of factors need to be assessed. Following are some questions you can start with:

- Was the conduct verbal, physical, or both?
- How often did it occur?
- Was the alleged harasser a coworker, supervisor, or contractor? Did others join in?
- Was the conduct focused on more than one person?
- Is it verbal or physical behavior of a sexual nature? Is it because of my sex?
- Was the conduct unwelcome, offensive, or inappropriate?
- Does the harasser have more power or authority?
- Is my career at any risk if I do not submit to the behavior?
- Does the conduct interfere with my job?
- Is the conduct making my work environment uncomfortable or unpleasant?

Address the Harassment

If you feel you have been or are being sexually harassed, you should immediately report inappropriate conduct of a sexual nature to your manager or supervisor. If the person is your manager or supervisor, you have various options by which to address the harassment.

1. Tell the person immediately and convey clearly that the conduct is unwelcome and it must stop.

Name the conduct specifically. For example, "Don't look at my chest when you talk to me". State how the person's behavior makes you feel. For example, "Stop telling sexual jokes around me. It makes me uncomfortable, and I don't like it."

If you are not comfortable talking to the person directly, if possible, report it to someone in your supervisory chain. You may also use any of the avenues traditionally available to report allegations, including Civil Rights, the Administrator's Hotline or Security.

2. Inform your supervisor or management official.

Employees are encouraged to speak to their supervisor or management official about any form of sexual harassment they experience, as soon as it occurs.

If you have documentation, about the incident(s) you should share it with your management official. Once you have reported the incident(s) to management official in the agency, he/she has an obligation to act. Management is expected to take swift, thorough and effective action to discern the facts and, where warranted, take appropriate corrective action to end the inappropriate conduct. They are also required to report any sexual harassment incident(s) or misconduct of a sexual nature to the Accountability Board within 2 days of learning about the matter.

An employee whose supervisor is the harasser should talk to the next highest level official in your supervisory chain. If you are not comfortable using this approach, you may use any of the avenues traditionally available to report allegations, including Civil Rights, Administrator's Hotline, or Security.

3. Contacting the Accountability Board.

While we encourage employees to use their management chain to report allegations of sexual harassment you may also report allegations directly to the Accountability Board by calling the Board Coordinator at (202) 267-3065.

The Accountability Board is comprised of senior FAA officials. The Accountability Board reviews management's responses to all allegations or incidents of verbal, written, graphic, sexual or physical harassment and other misconduct that creates or that may reasonably be expected to create an intimidating, hostile, or offensive work environment based on race, color, religion, gender, sexual orientation, national origin, age, or disability. Examples of such harassment or misconduct in the workplace may include, but are not limited to: (1) Insulting words or phrases, slurs, stereotyping, intimidating or hostile acts; or (2) Material placed on walls or bulletin boards or circulated in the workplace that insults, denigrates, or offends; or (3) Actions that threaten or result in physical contact such as hitting, shoving, pushing, and/or other acts of aggression.

Allegations or incidents of misconduct of a sexual nature include behavior that falls short of the legal definition of sexual harassment but nonetheless impacts job performance or is not conducive to a professional work environment. Actions that may not meet the legal definition of sexual harassment, depending on the specific

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circumstances, but may be considered misconduct of a sexual nature include a sexual joke, remark, or question or an unwelcome letter or telephone call.

Allegations should be reported to management or directly to the Accountability Board as soon as possible after the incident occurred but not later than 60 days after the incident. Allegations report to management, EEO Counselors, Office of Civil Rights staff, or the Administrator's Hotline must be reported to the Board within 2 working days from the date of becoming aware of the allegation.

Allegations of reprisal for reporting or for cooperating in any official inquiry or investigation of allegations set forth in the above paragraphs shall also be reported to the Accountability Board, and the procedures prescribed in this order shall apply. Reprisal is the wrongful threatening or taking of unfavorable action against, or withholding favorable action from, an employee as the result of, or as a contributory factor of, that employee's reporting or cooperating in the inquiry or investigation of such allegations.

Management has 15 working days from the date it became aware of the allegation to conduct an inquiry and advise the Board of the proposed action.

Management may request a security investigation through the Board. If the Board Director and the Special Investigations Officer concur than an investigation is warranted, security has 30 working days to complete report of investigation. Management has 10 working days from receipt of the report of investigation to advise the Board of the proposed action.

Detailed information about the Accountability Board process can be found in FAA Order 1110.125A by visiting the Human Resource website at www.faa.gov/ahr/account/account/cfm.

4. Filing an EEO Complaint or Negotiated Grievance.

If any employee or applicant believes he/she has been sexually harassed, he/she may file an EEO complaint on the basis of sex discrimination. For procedures for filing a discrimination complaint, call 1-888-954-8688 or your Region or Center Office of Civil Rights.

Employees who are part of a collective bargaining unit may also choose to file a grievance under their Collective Bargaining Agreement (CBA) instead of a discrimination complaint, if the CBA allows grievances alleging sexual harassment. For information on filing a grievance under a CBA, contact your local union representative.

Section 1614.302 of Title 29 of the Code of Federal Regulations provides that a complaint of employment discrimination related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB) is known as a "mixed case complaint." Appealable actions to MSPB for FAA employees include a suspension of more than 14 days; a reduction in pay or grade; a removal for conduct or performance; a furlough of 30 days or less (but not including placement in a nonpay status as the result of a lapse of appropriations or an enactment by Congress; or a reduction in force. Appeal rights may differ, however, for bargaining unit and non-bargaining unit employees. Employees should contact their servicing Human Resource Management Office (HRMO) for additional information. For more information on how to file an appealable action with MSPB call the MSPB at (202) 653-7200, Toll Free 1-800-209-8960 or e-mail mspb@mspb.gov.

When considering which process to utilize, it is important to know that an employee cannot file both a discrimination complaint and grievance. The employee is considered to have made a choice when he/she files a formal written EEO complaint.

Regardless, of the option chosen, employees should be cognizant that each process has a specific statutory timeframe, by which an employee must take action. Employees must also be aware that electing to contact the Accountability Board will not extend the time period for filing an EEO complaint with the EEOC or MSPB or under a CBA.



Although you may consider your conduct toward coworkers harmless, they may regard it as offensive or unwelcome. In dealing with other workers, ask yourself the following questions:

- Have my coworkers indicated through actions or words that they do not appreciate some of my conversations or jokes?
- Would I act differently toward my coworker if a family member, or a girlfriend / boyfriend was in the room?
- If I would act differently, why is my behavior appropriate for a coworker but not okay in the presence of others whom I would treat with dignity and respect?
- Am I treating my coworker as I would want to be treated?
- Would I want a transcript of my conversation or behavior to be publicly displayed in the workplace?

Even though you may not intend to offend your coworkers, your conduct may have that effect. It is important for all of us to understand that even when we intend no offense, inappropriate conduct could make others feel uncomfortable. A good rule to follow is, if you question whether your behavior could be perceived as inappropriate or offensive to others; it is best to refrain from acting. It is better to be safe than sorry.

The FAA's goal is to stop sexual harassment before it happens. We must work together to eliminate sexual discrimination whenever possible and wherever it occurs. The best way to do this is to treat each other with dignity and respect. We should make every effort to prevent and eliminate sexual harassment in the workplace.



FAA's supervisors and managers are in the best position to protect employees and the agency against sexual harassment and its consequences. Management officials must make every effort to be aware of employee interactions, work problems, performance, and the office work environment. They are in daily contact with their staffs and have the responsibility for supervising their immediate employees and for applying FAA's policies to prevent sexual harassment.

Management's responsibilities include:

- Support and enforce policies
- Disseminate the policy widely to all locations
- Have a system for informing any new personnel and all personnel of the policy
- Ensure and monitor that all supervisors understand and follow their responsibilities when a complaint is made or they become aware of any harassing behavior
- Conduct prevention of sexual harassment and complaint procedure training
- Inform all employees what actions to take if they are harassed
- Emphasize to all employees that sexual harassment will not be tolerated
- Treat every incident seriously, investigate complaints, take corrective action against an employee engaged in inappropriate conduct
- State expectations regarding acceptable behaviors in the workplace and accept nothing less
- Set an appropriate example of professional work behavior; that is, do not engage in inappropriate behaviors or misconduct of a sexual nature
- Outline the penalties contained in the Employee Conduct & Discipline Handbook, for employees who engage
 in sexual harassment behaviors

Individual responsibilities

- Know the policies
- Consider your attitudes
- Am I treating others, as they want to be treated?
- Avoid making assumptions

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- Think before making personal comments
- Have my coworkers indicated through actions or words that they do not appreciate some of my conversations or jokes?
- Set a positive example
- Would I act differently toward my coworker if a family member, or a girlfriend / boyfriend was in the room?
- Behave respectfully
- Would I want a transcript of my conversation or behavior to be publicly displayed in the workplace?
- Report disrespectful behavior

Is it Sexual Harassment or Not?

A female coworker often touches your shoulder when discussing a work-related issue with you. This makes you uncomfortable. Is it sexual harassment?



Additional facts need to be presented in order to make a determination, e.g., how severe and pervasive the conduct is. If there is nothing openly sexual about the touching, it may not be sexual harassment. If it is openly sexual and occurs with a degree of frequency to render it pervasive, it may be sexual harassment. In either case, if you find the touching uncomfortable or objectionable, you should ask your coworker to stop.



Sexual Harassment is a Behavior

- Sexual harassment is a behavior, and adults are responsible for their own behavior and its consequences.
- We each have the responsibility to treat others with respect in the workplace. Respect starts with understanding that all people have value.
- If we stay aware of our responsibility and assert our rights to a respectful work environment, we will have taken an important step toward preventing sexual harassment at work.

ASSISTANT ADMINISTRATOR FOR CIVIL RIGHTS AND FAA DIVERSITY ADVOCATE

800 Independence Avenue, SW Washington, DC 20591 (202) 267-3258

Deputy Assistant Administrator for Civil Rights

(202) 267-3264

Civil Rights Offices

Aeronautical Center (AMC-9)

Mike Monroney Aeronautical Center P.O. Box 25082 Oklahoma City, OK 73125 405-954-5552

Alaska (AAL-9)

222 West 7th St., #14 Anchorage, AK 99513-7587 907-271-5289

Central (ACE-9)

901 Locust, Room 521 Federal Building Kansas City, MO 64106-2641 816-329-2965

Eastern (AEA-9)

JFK International Airport Fitzgerald Federal Building Jamaica, NY 11430 718-553-3295

Great Lakes (AGL-9)

2300 Devon Ave. Des Plaines, IL 60018 847-294-7209

New England (ANE-9)

12 New England Executive Park Burlington, MA 01803 781-238-7060

Northwest Mountain (ANM-9)

1601 Lind Avenue, SW Renton, WA 98055-4099 425-227-2009

Fax: 425-227-1009

Southern (ASO-9)

1701 Columbia Avenue College Park, GA 30337 404-305-5250

Fax: 404-305-5258

Southwest (ASW-9)

2601 Meacham Blvd. Ft. Worth, TX 76137-4298 817-222-5009

Fax: 817-22-5049

Western-Pacific (AWP-9)

15000 Aviation Blvd. Lawndale, CA 90261 310-725-3943

Fax: 310-725-6819

Technical Center (ACT-9)

Atlantic City International Airport Atlantic City, NJ 08405 609-485-6675

Fax: 609-485-4667

Federal Aviation Administration Headquarters

Assistant Administrator for Civil Rights and FAA Diversity Advocate (202) 267-3258

Deputy Assistant Administrator for Civil Rights (202) 267-3264

The National Intake Unit for Initiating an EEO Pre-complaint 1-888-954-8688 1-800-877-8339 (TTY relay service)

EEO Consulting Manager (202) 385-8130

National Federal Women's Program Manager (202) 385-8128

National Hispanic Employment Program Manager (202) 385-8127

National People with Disabilities Program (202) 385-8430

TDD/TDY (202) 267-9730

Policy statements and booklet can be found at www.faa.gov/acr

Additional copies of this booklet can be purchased by calling the Federal Aviation Administration Communications Graphics Department at 202-267-8774. Reference document number HQ-039104.qxd.